IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 31 OF 2007

Shri Sukdeo Kalu Ahire .. Appellant.

V/s.

Shri Laxman Umaji Bachhav & Ors. .. Respondents.

Mr. S.M. Sabrad for the Appellant.

CORAM : S. A. BOBDE, J.

DATED : 11th JULY, 2007.

P.C. :-

. This is a second appeal by an unsuccessful plaintiff.

2. The plaintiff has sued the respondents for removal of encroachment and an injunction restraining them from obstructing the plaintiff's possession over four ares of land. Both the courts below have dismissed the appellant's suit on the ground that there is no encroachment as alleged. Mr.Sabrad, the learned counsel for the appellant submitted that the courts below ought not to have rejected the report of the surveyor, namely, one Mr. Mahajan. Apart from this being the matter of appreciation of evidence, which would not be gone into

by this court in the second appeal, it is clear that the rejection of the surveyor's report is reasonable and not vitiated by any perversity. The lower appellate court has rejected the report on the ground that the surveyor did not make measurement on the basis of any fixed markings on the adjacent land but has made the report on the basis of the Bandh which is well known as not being a permanent fixture.

3. Mr. Sabrad, the learned counsel for the appellant next contended that an adverse inference ought to have been drawn against the respondents for not examining the witness, who had prepared a map. The appellate court has rightly declined to draw any adverse inference on the ground that the map was not drawn by the respondents for any public purpose but apparently for a private purpose and therefore, no adverse interference need be drawn.

4. In these circumstances of the case, no substantial question of law arises in the second appeal and therefore, the same is hereby dismissed.

(S.A.BOBDE,J.)

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